

ARTICLE 13-05

MONEY BROKERS

Chapter
13-05-01 Money Brokers

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13-05-01-01. No advance fee - Exception. Except as specified by this section, no money broker may accept any type of fee in advance, to include expense deposits, from a potential borrower for the procurement of a loan. A money broker may accept an advance expense deposit which may not exceed the money broker's good-faith estimate of the actual cost of any appraisal or credit reports performed by an independent appraiser or independent credit reporting agency and required by the originating lender for the evaluation of the potential borrower's loan application. Any expense deposit that exceeds the actual cost of any appraisal or credit reports must be promptly refunded to the borrower or credited to the borrower's account at the time of the loan closing.

History: Effective February 1, 1984; amended effective October 1, 1984.

General Authority: NDCC 13-04.1-01

Law Implemented: NDCC 13-04.1-06

13-05-01-02. Contracts to be in writing. Before a money broker performs any services for a potential borrower, the money broker and the borrower shall enter into a written contract specifying the duties and conditions under which the money broker shall perform the broker's services. The contract must fully disclose estimated commissions and fees, must have a definite expiration date, and must indicate costs to be paid if the loan is not closed. A provision must be

made designating the timing of fee payments (i.e., on commitment, on closing, on funding).

History: Effective February 1, 1984.

General Authority: NDCC 13-04.1-01

Law Implemented: NDCC 13-04.1-06

13-05-01-03. Full disclosure required. In all dealings between a borrower and a money broker, the money broker is charged with a duty to fully and fairly inform the prospective borrower of all liabilities, costs, and other financial obligations that can or will be incurred by the borrower if the borrower uses the services of the money broker.

History: Effective February 1, 1984.

General Authority: NDCC 13-04.1-01

Law Implemented: NDCC 13-04.1-06

13-05-01-04. Contents of loan disclosure statement. Whenever a money broker arranges a loan for a borrower, the following loan disclosure statement must be prepared by the money broker for the borrower:

1. Summary of loan terms.

- a. Principal amount of loan.
- b. Estimated deductions from principal amount.
 - (1) Costs and expenses.
 - (2) Brokerage commission.
 - (3) Liens and other amounts to be paid on authorization of borrower.
 - (4) Any other deductions.
- c. Estimated cash payable to borrower.

2. General information concerning loans.

- a. The amount of principal and interest payable, the interest rate, the number of payments and whether they are monthly or quarterly, and whether there is a final or balloon payment to pay off the loan in full. If there is a balloon payment, the following cautionary instructions must be printed in bold type on the contract:
CAUTION TO BORROWER: IF YOU DO NOT HAVE THE FUNDS TO PAY THE BALLOON PAYMENT WHEN DUE, IT MAY BE NECESSARY FOR YOU TO OBTAIN A NEW LOAN AGAINST YOUR PROPERTY FOR THIS PURPOSE AND YOU MAY BE

REQUIRED TO AGAIN PAY COMMISSION AND EXPENSES FOR ARRANGING THE LOAN. KEEP THIS IN MIND IN DECIDING UPON THE AMOUNT AND TERMS OF THE LOAN THAT YOU OBTAIN AT THIS TIME.

- b. Other information necessary, including the land description, types of instruments to be executed, and type of lien that will be against the property if the instruments are executed.
- c. Any prepayment penalty on full disclosure of the terms thereof.
- d. Whether credit life or credit disability will be required of the borrower as a condition of making the loan.

3. **Deductions from loan proceeds.**

- a. Estimated costs and expenses to be paid by the borrower out of the principal amount of the loan, including appraisal fees, escrow fees, abstract or title insurance fees, notary fees, attorney's fees, recording fees, credit investigation fees, and other costs and expenses.
- b. An estimate of the liens and other amounts to be paid out of the principal amount of the loan, on authorization of the borrower, including fire or other property insurance premiums, credit life or disability insurance premiums, beneficiary statement fees, reconveyance or similar fees, or liens against property securing the loan or other fees.

4. **Estimated figures.** All figures which are estimates must be clearly identified as such and a statement must be included specifying whether or not the borrower may refuse to accept the commitment if the estimates are exceeded by a specified percent, and, if so, the contract must set forth the specified percent.

Disclosures must be made in plain English and set forth in meaningful order.

History: Effective February 1, 1984.

General Authority: NDCC 13-04.1-01

Law Implemented: NDCC 13-04.1-06

13-05-01-05. Restrictions on chargeable costs and expenses. In addition to the initial written contract, the money broker shall give to the potential borrower an estimate of the amount of chargeable costs and expenses that will be collected by the money broker in case no loan is found for the borrower. An estimated total cost to the borrower under these conditions must be itemized and stated to the borrower. All of these costs and expenses, if actually expended and

chargeable to the borrower, must have been actually and reasonably expended for the potential borrower's benefit.

History: Effective February 1, 1984.

General Authority: NDCC 13-04.1-01

Law Implemented: NDCC 13-04.1-06

13-05-01-06. Filing of annual reports. Every money broker licensee operating as a money broker shall file an annual report with the department of financial institutions. This must be done at the time of submitting the application for renewal of license on the forms supplied with the renewal application. If the department of financial institutions deems that further inquiry is necessary, the money broker shall give specific details on any transaction to the department of financial institutions.

History: Effective February 1, 1984; amended effective June 1, 2002.

General Authority: NDCC 13-04.1-01

Law Implemented: NDCC 13-04.1-05

13-05-01-07. Availability of records. The money broker shall maintain all records of its transactions at its office for at least six years and these records must be subject to examination by the department of financial institutions.

History: Effective February 1, 1984; amended effective June 1, 2002.

General Authority: NDCC 13-04.1-01

Law Implemented: NDCC 13-04.1-07

13-05-01-08. Statements to borrowers. When loan funds are not provided or arranged for a borrower, any statement from the money broker to the potential borrower whereby the money broker seeks reimbursement of any costs and expenses must contain an itemized listing of costs and expenses chargeable to the potential borrower.

History: Effective February 1, 1984.

General Authority: NDCC 13-04.1-01

Law Implemented: NDCC 13-04.1-06

13-05-01-09. Notice to borrower regarding regulation by the department of financial institutions. The written contract as provided in section 13-05-01-03 of these regulations must contain the following notice in capital letters: NOTICE: MONEY BROKERS ARE LICENSED AND REGULATED BY THE DEPARTMENT OF FINANCIAL INSTITUTIONS, 2000 SCHAFER STREET, SUITE G, BISMARCK, NORTH DAKOTA 58501-1204. THE DEPARTMENT OF FINANCIAL INSTITUTIONS HAS NOT PASSED ON THE MERITS OF THE CONTRACT AND LICENSING DOES NOT CONSTITUTE AN APPROVAL OF THE TERMS OR OF THE BROKER'S ABILITY TO ARRANGE ANY LOAN.

COMPLAINTS REGARDING THE SERVICES OF MONEY BROKERS SHOULD BE DIRECTED TO THE DEPARTMENT OF FINANCIAL INSTITUTIONS.

History: Effective February 1, 1984; amended effective December 1, 1995; November 1, 1997; June 1, 2002.

General Authority: NDCC 13-04.1-01

Law Implemented: NDCC 13-04.1-06

13-05-01-10. Copy of written contracts to the potential borrower. A copy of all written contracts between the money broker and the potential borrower must be given to the potential borrower at the time that the contract is signed.

History: Effective February 1, 1984.

General Authority: NDCC 13-04.1-01

Law Implemented: NDCC 13-04.1-06

13-05-01-11. Unprofessional conduct and grounds for revocation of license. Any act or conduct violating any of the provisions of this chapter or any law or rule regarding money brokers constitutes unprofessional conduct and constitutes grounds for revocation of the money broker license.

History: Effective February 1, 1984.

General Authority: NDCC 13-04.1-01

Law Implemented: NDCC 13-04.1-08